Nos. 162 - 163

MAY 25 1933

CHARLES ELMORE CROP
CLERK

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1932.

No.

FIRST NATIONAL BANK OF CINCINNATI and INTERNATIONAL HEATER COMPANY,
Petitioners (Appellants Below),

against

RUDOLPH B. FLERSHEM, CHARLES O. CORNELL, JOHN H. WATERS and FRANK B. CAHN, as the Reorganization Committee constituted under the Plan and Agreement dated February 11, 1931, for the Reorganization of NATIONAL RADIATOR CORPORATION and BANKERS TRUST COMPANY, Trustee, NATIONAL RADIATOR CORPORATION (Delaware), NATIONAL RADIATOR CORPORATION (Maryland), ROBERT S. WATERS and WILLIAM G. HEINER, Receivers, CARL E. RESLEY and G. FRANKLIN LUDINGTON,
Respondents (Appellees Below).

BRIEF FOR RESPONDENT BANKERS TRUST COMPANY AS TRUSTEE IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI.

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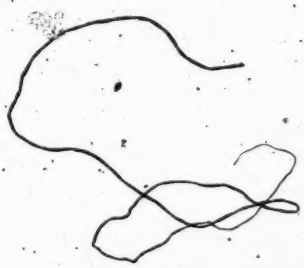

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BRIEF FOR RESPONDENT BANKERS TRUST COMPANY AS TRUSTEE IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI.

This is a companion petition to No. 964, to which this Respondent has already filed an answering brief.

The brief filed by the Reorganization Committee in opposition to this petition deals in detail with the various contentions raised thereby as to the fairness of the Plan of Reorganization. Fundamentally, it seems to this Respondent that the issue raised by this petition is *merely* whether or not, in all the circumstances, the properties and assets of National Radiator Corporation should, upon the application of this Trustee, acting under instructions from 96% of the holders of the debentures whom it represented, have been sold, and permitted to be purchased pursuant to a Plan of Reorganization. Petitioners apparently maintain that the procedure followed in the District Court was such a radical departure from the usual course as to merit review by this Court. In the opinion of this Respondent, which of necessity closely followed the proceedings both in the District Court and in the Circuit Court of Appeals, these proceedings were conducted along the ordinary and usual lines, a full and fair opportunity being afforded to all creditors and other parties interested to present their views to the Court.

We think that a brief statement of the various steps in the District Court proceedings will of itself convince this Court that such was the case. This Respondent, as Trustee, applied for and obtained a judgment for the amount of the outstanding debentures. It then applied for a decree of sale; long hearings were held preliminary to the entry of that decree, at which detailed evidence was adduced with respect to the value of the properties; full opportunity was given to Petitioners to cross examine Complainants' witnesses and to produce witnesses of their own. Based upon the evidence so adduced which was, we think, ample to ground the finding, the Court included in its decree of sale an upset price. The property was purchased for $50,000 more than the upset price. After the sale, a hearing was held upon the question of confirmation, at which time again Petitioners had every opportunity to present to the Court their views as to the

fairness of the Plan, and evidence in support of its fairness was taken. The District Court determined that the Plan was fair and therefore confirmed the sale. The Circuit Court of Appeals has affirmed that determination.

The petition should be denied.

Respectfully submitted,

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